

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LeSHAWN WASHINGTON,	§	
	§	No. 713, 2011
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. No. 1012007994
Plaintiff Below,	§	Cr. I.D. No. 00610626
Appellee.	§	

Submitted: July 5, 2012

Decided: July 25, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 25th day of July, 2012, on consideration of the briefs of the parties, it appears to the Court that:

1) Leshawn Washington was convicted, after a jury trial, of first degree robbery, second degree conspiracy, and resisting arrest. He argues that the first degree robbery conviction should be reversed because it is inconsistent with the deadlocked jury verdict on the separate charge of possession of a firearm during the commission of a felony (PFDCF). We find no merit to this argument and affirm.

2) On December 11, 2010, Wilmington Police Officer Mary Quinn responded to a call of shots fired near 8th and Washington Street, Wilmington, Delaware. She found William Reeder on the ground with a gunshot wound in his back. Reeder told Quinn that three or four black males approached him, and that he knew one of them by the nickname "Littles." While Littles was struggling to get Reeder's money, Reeder saw that Littles had a silver handgun. Reeder tried to run away, but he was shot in the back. Reeder later identified Washington as the person he knew as Littles.

3) One month later, Wilmington Police Officer Steven Bender responded to a call of a suspicious vehicle near 10th and Lombard Street, Wilmington, Delaware. At that location, Bender saw three black males in a blue Chevrolet. As Bender approached the car, the men fled. Bender chased and apprehended Usef Allen, who had a silver, 25 caliber gun in his possession. After Bender placed Allen in the back of the patrol car, he returned to the Chevrolet and saw a black, 9 mm handgun on the ground next to the car. Another responding police officer found Washington hiding a short distance from the car, and arrested him.

4) The police tested the 25 caliber handgun, and determined that the two casings that had been retrieved from the December shooting were ejected from the gun found in Allen's possession. Experts also tested the 9 mm handgun, and found Washington's DNA on the weapon.

5) Washington was indicted on two sets of charges. The first indictment, relating to the shooting incident, charged him with first degree robbery, first degree assault, PFDCF, and second degree conspiracy. The second indictment, relating to the suspicious activity in the blue Chevrolet, charged Washington with carrying a concealed deadly weapon and resisting arrest. The indictments were consolidated for trial. The jury found Washington guilty of first degree robbery, second degree conspiracy, and resisting arrest. The jury found Washington not guilty of carrying a concealed deadly weapon, and was unable to reach a verdict on the remaining charges.

6) Washington argues that the jury verdicts were reversibly inconsistent. The jury found him guilty of first degree robbery. One of the elements of that offense is that the person “[d]isplays what appears to be a deadly weapon”¹ But the jury deadlocked on the PFDCF charge, and a person commits that offense when he possesses a firearm during the commission of a felony.² The State based its first degree robbery charge on its evidence that the gun used in the robbery was the same gun that was found one month later during the vehicle stop. Because the jury deadlocked on the charge that Washington was carrying a concealed deadly weapon

¹11 *Del. C.* § 832.

²11 *Del. C.* § 1447A.

at the vehicle stop, he argues that the State failed to prove an essential element of the first degree robbery charge – that Washington displayed a gun during the robbery.

7) Washington relies on *Johnson v. State*³ and *Priest v. State*⁴ in support of his argument that the two verdicts are “reversibly inconsistent.” Those cases are inapposite. In *Johnson*, the jury acquitted the defendant on a burglary charge, but convicted him on the charge of conspiring to commit burglary. This Court reversed the conspiracy conviction, holding:

By failing to prove beyond a reasonable doubt that the defendant committed burglary in the third degree as alleged in the first count of the indictment, the State also failed to prove that he committed the overt act necessary to the conspiracy charge as alleged in the third count of the indictment.⁵

Similarly, in *Priest*, this Court held that a defendant cannot be convicted of possession of a firearm during the commission of a felony if the jury acquits the defendant on the underlying felony charges.⁶

³409 A.2d 1043 (Del. 1979).

⁴879 A.2d 575 (Del. 2005).

⁵*Johnson v. State*, 409 A.2d at 1044.

⁶*See, also: Holland v. State*, 744 A.2d 980 (Del. 2000) (Where defendant was the only person alleged to have committed assault, and the jury did not find defendant guilty of assault, defendant’s conviction of conspiracy to commit assault is legally inconsistent.)

8) Those decisions are distinguishable because the two offenses at issue here – first degree robbery and PFDCF – do not share a common element. The robbery conviction requires only that Washington displayed what appeared to be a handgun, whereas PFDCF requires that Washington actually possessed a handgun. Thus, the two verdicts are not legally inconsistent.

9) The remaining question is whether there was sufficient evidence for a reasonable juror to find, beyond a reasonable doubt, that Washington displayed what appeared to be a handgun during the robbery.⁷ There was evidence that Reeder identified Washington while talking to a responding police officer. During that conversation, Reeder told the officer that Washington displayed a silver handgun. That is sufficient evidence to support the guilty verdict.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁷*Turner v. State*, 2012 WL 1795831, at *2 (Del. Supr.).